Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States

AEROVIAS DE MEXICO S.A. DE C.V.,
DOING BUSINESS AS AEROMEXICO,
Petitioner

v.

GERARDO DE PREVOISIN; GP INVESTMENTS INC.,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Can the federal courts engraft a conducts and effects test upon a federal statute—18 U.S.C. § 1956(c)(7)(B)—that expressly provides for extraterritorial jurisdiction.

Does a foreign bank have to suffer damages for the *any scheme or attempt to defraud* language in 18 U.S.C. § 1956(c)(7)(B)(iii) to trigger extraterritorial jurisdiction.

Will promotion of an unlawful activity after the initial phase of "reinvestment" money laundering or an act in furtherance of "concealment" money laundering warrant the exercise of subject matter jurisdiction under 18 U.S.C. § 1956.

PARTIES TO THE PROCEEDING/CORPORATE DISCLOSURE STATEMENT

Under Rule 29.6, petitioner discloses its parent corporation, Servicios Corporativos CINTRA, S.A.

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BASIS FOR JURISDICTION

The United States Court of Appeals For The Fifth Circuit entered the judgment for review, on June 29, 2000. On August 9, 2000, the United States court of appeals entered its order denominated On Petition For Rehearing. This Court has jurisdiction to review on a writ of certiorari the court of appeals' judgment under 28 U.S.C.A. § 1254(1) (West 1993).

STATUTES IN ISSUE

§ 1956. Laundering of Monetary Instruments

(c)(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter 11 of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving-

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire;

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978;

18 U.S.C.A. § 1956(c)(7)(B)(iii) (West 2000).

§ 1956. Laundering of Monetary Instruments

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if-

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States, and

(2) the transaction or series of related transactions involves funds of monetary instruments of a value exceeding $10,000.

18 U.S.C. § 1956(f) (West 2000).

STATEMENT OF THE CASE

The basis for federal jurisdiction emanates from a federal question under 28 U.S.C.A. § 1331 (West 1993). The United States laws in issue include 18 U.S.C.A. § 1961 (West 2000) and 18 U.S.C.A. § 1956 (West 2000).

On January 12, 1995, petitioner filed suit against Gerardo de Prevoisin (Prevoisin) and GP Investments, Inc. (GP). (CR 11)[1]. Prevoisin moved to dismiss the action for lack of subject matter and personal jurisdiction. (CR 133). The United States district court granted the motion to dismiss for lack of subject matter jurisdiction and personal jurisdiction. (CR 1055).

The district court granted petitioner's motion for reconsideration (CR 1325), and denied Prevoisin's motion to reinstate the dismissal order. (CR 4031). In the March 31, 1999 order granting reconsideration, the district court held it had subject matter jurisdiction under the money laundering element of the

[1] "CR" represents the Court Record. The "[Number]" refers to page numbering in the lower right hand corner of the documents in the Court Record.

RICO claim and that it had personal jurisdiction over Prevoisin and GP. (CR 4031).

Prevoisin filed a second motion to dismiss, which the district court granted for lack of subject matter jurisdiction over the federal claims. (CR 4541). In affirming the dismissal order, the United States court of appeals contended the complained of predicate acts occurred primarily in Mexico. (App.A at 2a)

Factually, Prevoisin served as Aeromexico's chief executor officer and chairman of the board from 1989 until September, 1994. (CR 156). During his tenure, Prevoisin defalcated over $75,000,000.00 in Aeromexico funds for his personal benefit, through five transactions. The transactions involved the transfer of monies from Mexico to or through the United States and the subsequent transfer of proceeds from those transactions into or through the United States by wire or mail. Prevoisin used proceeds from those transactions to purchase, maintain, and preserve four condominiums in Vail, Colorado, which are held in the name of GP, a shell Delaware corporation.

1. *DYNAWORLD*

   A. In 1992, Aeromexico wired $15,250,000.00 (all figures will be in American Dollars unless indicated otherwise) from Mexico City to Dynaworld Bank and Trust's (Dynaworld) account in New York City. The monies were invested in two Dynaworld certificates of deposit. (CR 34).

   B. Prevoisin then personally borrowed $15,250,000.00 from Dynaworld, a foreign bank. (CR 461). To procure the loan, Prevoisin fraudulently signed a pledge of Aeromexico's certificates of deposit to secure his personal loan. (CR 461). Dynaworld was instructed to wire $6,500,000.00 of the loan proceeds to Prevoisin's numbered account in New York City.

C. Prevoisin did not have the inherent, apparent, actual or implied authority to secure his personal loan with the Aeromexico certificates of deposit, but he misrepresented to Dynaworld that he did. (CR 207, 562, 548, 1916).

D. Prevoisin concealed this transaction by rolling over his debt and the pledge every 180 days, until he resigned from Aeromexico. (CR 1916). Prevoisin paid the interest on his personal loan by directing the wire transfer of Aeromexico monies from Mexico City to Chemical Bank in New York. (CR 35). Prevoisin also concealed this transaction by filing false statements with the Securities and Exchange Commission regarding the purported pledge of Aeromexico assets and by failing to disclose and making false representations to the external auditors. (CR 4483-4485).

2. *INVERWORLD*

A. In 1991 and 1992, by fraud, Prevoisin had Aeromexico advance monies to entities and accounts controlled by Prevoisin. (CR 4139). The advances included wire transfers to Citibank and Chemical Bank in New York City and Banamex in Houston as well as a mailing to Houston. (CR 4328-4341). The advances with interest totaled about $37,500,000.00, by December 28, 1992. (CR 35).

B. Before Aeromexico closed its 1992 books, Aeromexico's treasurer was instructed to invest $37.5 million with and through Inverworld, Inc. (Inverworld) and Inverworld Securities, Inc. (ISI), two companies in San Antonio, Texas. (CR 1920).

C. Aeromexico wired $37.5 million for investment to Inverworld and ISI, on December 28, 1992. (CR

4360). The wire went from Mexico City to, and through, Citibank and Swiss Bank in New York City. (CR 4360). Inverworld, from San Antonio, Texas, wired back confirmation of the investment to Aeromexico. (CR 1270).

D. On the same day, Prevoisin executed a personal loan to an Inverworld lending entity for $37,500,000.00. (CR 458). An unauthorized, fraudulent pledge signed by Prevoisin pledged Aeromexico's $37,500,000.00 investment against Prevoisin's personal loan. (CR 1870-1872). On December 28, 1992, Inverworld wired the $37,500,000.00 to Invermonedas, S.A. de C.V. in Mexico City through Swiss Bank in New York City and Bank of America, N.A. in California. Invermonedas, exchanged the $37.5 million to Mexican Pesos and deposited the exchanged monies into an Aeromexico bank account to pay-off the outstanding accounts receivable described above, including Prevoisin's personal account. (CR 1174, 1920-1921, 4366).

E. Again, Prevoisin did not have the inherent, apparent, actual or implied authority to secure his personal loan with Aeromexico's assets. (CR 188-189, 1924 ,1934). Prevoisin also concealed this transaction by rolling over his debt and the pledge every 180 days, until he resigned from Aeromexico (CR 1829-1847), by directing the wire transfer of Aeromexico monies to Citibank and Swiss Bank in New York City to cover interest on his personal loan. (CR 1723, 4343-4385). Prevoisin also set up a shell Cayman Island company, Latin Credit Corporation, in 1994, to further the fraud by having Inverworld denominate Aeromexico's investment as Latin Credit Corporation commercial paper in monthly account statements and letters transmitted to Aeromexico. (CR 1359, 4765).

Prevoisin also failed to disclose the purported pledging of assets to the external auditors and to the Securities and Exchange Commission. (CR 3676-3677, 4483-4485).

3. *AM-MEX AND ABC*

A. Prevoisin had two shell companies formed in 1992. The companies were Am-Mex Services Corporation (Am-Mex), a Texas corporation, and ABC Services, Inc. (ABC) a British Virgin Islands entity subject to secrecy laws. (CR 1925) Prevoisin established separate accounts at Texas Commerce Bank - San Antonio, N.A. for Am-Mex and ABC. (CR 984, 1754).

B. From 1992 through 1994, Prevoisin had Aeromexico issue five checks totaling $220,000.00 to Am-Mex and twelve checks totaling $400,000.00 to ABC on Aeromexico's account in Houston. (CR 941-942). Prevoisin deposited the checks at the San Antonio bank. (CR 988-994).

C. After these fraudulent deposits, Am-Mex, to close its account, issued one check to ABC. (CR 996). ABC then issued, and Prevoisin signed, about 70 checks for Prevoisin's and GP's personal benefit, primarily to payees in the United States. (CR 4413-4436).

4. *CITIBANK*

A. In 1994, on eight occasions, Prevoisin had Aeromexico wire $1,000,000 to his personal numbered account at Citibank in New York City. (CR 158, 467-482). Prevoisin contends these monies were for illegal campaign contributions to the ruling party in Mexico. (CR 158).

B. Prevoisin used these illegally obtained funds to purchase a condo in Vail, Colorado, by wire transfer

from New York City to Houston, Texas. (CR 1082, 1223, 1221). Prevoisin also transferred some of these funds from New York to Texas to purchase a Ferrari and four BMWs. (CR 1186-1187). Prevoisin, a few days after resigning and leaving Mexico, closed-out his account at Citibank by wire transferring $5,000,000.00 from his personal numbered account at Citibank to a Swiss Bank account in the Bahamas, which is subject to bank secrecy laws. (CR 1181-1182).

5. *ADVANCES*

A. Prevoisin had two personal receivable accounts at Aeromexico, one in dollars and one in pesos. (CR 226-230). His advances totaled over $13 million dollars when he resigned. (CR 196, 226-230). The unpaid advances included Aeromexico monies wired from Mexico City to Citibank, Chemical Bank, and Swiss Bank in New York City to pay interest on Prevoisin's personal loans at Dynaworld and Inverworld. (CR 4312, 4328-4341, 4343-4385). Prevoisin also had Aeromexico monies wired and transmitted to Houston and San Antonio to purchase a Bentley and pay for armoring of the Bentley and other vehicles owned by Prevoisin. (CR 446-447).

Prevoisin failed to disclose and concealed the above five transactions from Aeromexico's board of directors, external auditors, and major creditors- four foreign Mexican banks: Banco Mexicano, Banco Serfin, Bancomer, and Banamex (CR 1916, 4483-4485). Prevoisin also attempted to defraud the two foreign banking entities from which he obtained personal loans by executing unauthorized pledge agreements of Aeromexico assets.

ARGUMENT

CAN THE FEDERAL COURTS ENGRAFT AN INITIAL CONDUCTS TEST UPON A FEDERAL STATUTE - 18 U.S.C. § 1956(f) - THAT EXPRESSLY PROVIDES FOR EXTRATERRITORIAL JURISDICTION.

The Money Laundering Statute provides that

> [T]here is extraterritorial jurisdiction over the conduct prohibited by this section if:
>
> (1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and
>
> (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.00.

18 U.S.C.A. § 1956(f) (West 2000). The United States district court, at footnote four to its memorandum opinion and order (App. B at 8a), stated that the parties conceded "that the alleged money laundering occurred in part in the United States." No one contests that the transactions in issue involved funds exceeding $10,000.00. Thus, alleged prohibited conduct will trigger extraterritorial jurisdiction.

Under section 1956(c)(7)(B)(iii), prohibited conduct, namely, a "specified unlawful activity," regarding a financial transaction that occurs in part in the United States means—

> fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking act of 1978; . . . .

18 U.S.C.A. § 1956(c)(7)(B)(iii) (West 2000).

Rather than follow the express language of the statute, the United States court of appeals engrafted an initial conducts test on the money laundering statute, not unlike that employed in

RICO claims that lack express extraterritorial jurisdiction. *See North South Financial Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2nd Cir.1996). The United States court of appeals disregarded the parties' concession that the alleged money laundering occurred in part in the United States. The United States court of appeals just looked at where the first phase of each complained of financial transaction took place. Finding that the first phase of each financial transaction occurred in Mexico, the United States court of appeals rejected extraterritorial jurisdiction.

The United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court. To wit, can the federal courts engraft tests for the exercise of extraterritorial jurisdiction when a statute expressly provides for such jurisdiction.

Congress recognized limited court resources and has restricted the express provision of extraterritorial jurisdiction to five circumstances: 18 U.S.C. § 351 (Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault); 18 U.S.C. § 1751 (Presidential and Presidential staff assassination, kidnapping, and assault); 18 U.S.C. § 1956 (money laundering); 18 U.S.C. § 2332b (terrorist acts); and 18 U.S.C. § 3042 (a fugitive from justice charged with or convicted of federal crime). By restricting dictated extraterritorial jurisdiction, Congress also recognized that the courts were not to use those limited resources to ascertain extraterritorial jurisdiction under these five circumstances, which the United States court of appeals has done.

Congress intended to send a clear message, that if you kill a President, assault a Congressman, kidnap a Supreme Court Justice, blow up a plane, flee to Paraguay or launder money, you can expect to be haled into a United States court, without exception. By engrafting a test or basis for exception on one of these statutes, the United States court of appeals, of necessity, engrafts a test and basis for exception on all five statutes.

One can see the practical import of engrafting a test or basis for exception on these five statutes in the murder of a Congressman. Suppose a Mexican drug dealer contracts a Mexican citizen to murder a Congressman vacationing in Mexico. Then suppose the Mexican drug dealer has the contract payment converted to dollars at a Mexican exchange house and wired to the account of a shell Delaware corporation at a San Diego bank. Then assume that monies from the San Diego bank account are used for the purchase of a house in La Jolla. Under the United States court of appeals' analysis, the murdered Congressman's family and estate could not bring a civil action against the Mexican drug dealer and contract killer in United States federal court in San Diego, because the initial/predicate conduct occurred in Mexico.

Under the United States court of appeals' analysis, one also has to question whether a federal criminal prosecution could proceed, because all the "predicate" acts occurred in Mexico, and thus, would not constitute a "specified unlawful activity" under 18 U.S.C. § 1956(c)(7)(B). And absent a "specified unlawful activity," a material element of a money laundering claim, no offense has occurred. 18 U.S.C. § 1956(a)(1-3).

The United States court of appeals' analysis is also particularly telling because the U.S. Attorney's Office in San Francisco just indicted the former prime minister of the Ukraine, Pavel I. Lazerenko, under 18 U.S.C. § 1956(c)(7)(B), for laundering proceeds from extortion activities committed solely in the Ukraine. (Case No. CR00-0284, N.D.Cal.).

The United States court of appeals' opinion serves as a road map for foreigners laundering money from drug dealing, murder, kidnapping, robbery, extortion, bombing, and fraud. Namely, commit crimes on foreign soil and then convert crime proceeds from a foreign currency to dollars before wiring the proceeds to the United States.

The Constitution's structure also refutes the Fifth Circuit's engrafted conduct test. Under the Constitution's structure,

legislative powers fall to Congress. U.S. Const. art.1, § 1. By engrafting a conducts test to ascertain extraterritorial jurisdiction, the Fifth Circuit invalidated the express extraterritorial jurisdiction provisions of the Money Laundering statute and exercised a legislative power. The Constitution does not afford an Article III Court the ability to rewrite 18 U.S.C. § 1956(f) to read:

> [T]here is extraterritorial jurisdiction over the conduct prohibited by this section if:
>
> (1) the conduct does not initially or primarily occur on foreign soil, regardless of the complained of person's citizenship; and
>
> (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.00.

Petitioner asked the Fifth Circuit to interpret 18 U.S.C. § 1956(c)(7)(B), not invalidate, modify or engraft tests on the extraterritorial provisions of 18 U.S.C. § 1956(f). Petitioner and similarly situated multinational companies with foreign subsidiaries and affiliates need to know under what circumstances a United States courthouse will be open to address their losses/damages when the proceeds from the murder of their employees, the kidnapping of their officers, their extortion, the bombing of their property, and the attempted fraud of their foreign bankers find their way to the United States.

Legislative history also undercuts the Fifth Circuit's holding. Congress enacted the money laundering statute to attack specified unlawful activity on a second front, the disposition of the ill-gotten proceeds. *See*. S.Rep. No. 99-433 at 2 (1986). By criminalizing the transfer of such gains, Congress wanted to foreclose any impression that the United States would serve as a repository for ill-gotten gains. *See United States v. Savage*, 67 F.3d 1435, 1441 (9th Cir. 1995), *cert. denied*, 516 U.S. 1136 (1996).

Congress, however, did have due process concerns, namely, would a foreign citizen operating outside the United States have an understanding/appreciation of United States law. *See* S.Rep. No. 99-433 at 14 (1986). This due process concern led to a list of criminal acts that foreigners would understand/appreciate, e.g., murder, kidnapping, assault, drug dealing. The addition of bank fraud recognized that persons capable of defrauding or attempting to defraud a foreign bank would be sophisticated enough to understand/appreciate United States law.

No one can question Sr. de Prevoisin's sophistication or that he understood and appreciated the consequence of attempting to defraud or defrauding foreign banks. This case reflects the very conduct Congress sought to address through the money laundering statute.

From an ethical argument viewpoint, the United States court of appeals' opinion warrants scrutiny by this Court. Mexico recently elected Vincente Fox, the first President from outside the political party that has ruled Mexico for 71 years. Sr. Fox ran on a platform of removing corruption from the Mexican political and business systems.

When presented with an opportunity to assist the Mexican people to address corruption that seeks refuge in the United States, the United States, through its courts, shies away. All the while requesting the Mexican people to fight drug traffickers who seek refuge in Mexico. As an ethical imperative, the United States, through its courts, should assist a sister country in fighting the criminal conduct that tears at the fabric of that country.

Additionally, the Fifth Circuit's opinion conflicts with holdings in the Second Circuit. *Alfadda v. Fenn*, 935 F.2d 475 (2nd Cir.1991); *Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041 (2nd Cir.1983); *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2nd Cir.), *cert. denied*, 423 U.S. 1018 (1975). The Second Circuit has held that a conduct analysis only becomes necessary if the federal statute is silent on extraterritorial jurisdiction.

In *Alfadda*, the Second Circuit wrote:

> [T]he Securities and Exchange Act is silent as to its extraterritorial jurisdiction. . . . Thus, in addressing transnational frauds, courts must ascertain "whether Congress would have wished the precious resources of the United States courts" to be devoted to such transactions. *Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041, 1045 (2nd Cir.1983) (quoting *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 985 (2nd Cir.), *cert. denied*, 423 U.S. 1018, 96 S.Ct. 453, 46 L.Ed.2d 389 (1975).

The above argument indicates the need for this Court to address the engrafting of tests and exceptions to a statute that expressly provides for extraterritorial jurisdiction.

DOES A FOREIGN BANK HAVE TO SUFFER DAMAGES FOR THE *ANY SCHEME OR ATTEMPT TO DEFRAUD* LANGUAGE IN 18 U.S.C. § 1956(c)(7)(B)(iii) TO TRIGGER EXTRATERRITORIAL JURISDICTION.

This issue also presents an important question of federal law that has not been, but should be, settled by this Court, even though the United States court of appeals avoided the issue.

The United States district court held that a foreign financial transaction had to involve a listed activity in section 1956(c)(7)(B) of the money laundering statute to be a "specified unlawful activity." The district court then went on to hold that the foreign bank fraud activity in section 1956(c)(7)(B)(iii) required Aeromexico to allege injury to the foreign bank. Indeed, the district court suggested that only a foreign bank had standing to assert a claim under section 1956(c)(7)(B)(iii). (CR 4550). The statute's plain language refutes the district court's reading.

The money laundering statute does not even speak to a foreign bank suffering losses. The statute simply states "fraud, or any scheme or attempt to defraud by or against a foreign

bank." The attempt, alone, to defraud a foreign bank constitutes a "specified unlawful activity." 28 U.S.C.A. § 1956(c)(7)(B)(iii) (West 2000).

Likewise, section 1956(c)(7)(B) of the money laundering statute does not limit standing to the foreign bank. Nothing in that section of the money laundering statute precludes a corporation from asserting money laundering against a corporate officer that fraudulently executes a corporate pledge for a personal loan from a foreign bank. And the fact that the foreign bank retains control over the improperly pledged corporate assets does not militate against the attempt to defraud the foreign bank. Nor does the fact that the corporation suffers a loss from the fraud, instead of the foreign bank that had the foresight to retain the corporation's assets to offset the fraudulently procured loan.

Again, the United States court of appeals' judgment serves as a road map. A road map for officers and directors of international corporations and entities to launder embezzled monies in the United States. Following the Fifth Circuit's directions, an officer need only collude with a foreign bank to effectively obtain immunity from prosecution in the United States for money laundering. Congress did not intend that message or countenance such a road map in the money laundering statute.

Technology has made the global economy a neighborhood store. The United States courts have to recognize, as Congress has, that extraterritorial jurisdiction reflects today's global economy when it comes to money laundering. And the United States courts of appeal and district courts have to further recognize that Congress can calibrate extraterritorial jurisdiction, in a way, the courts cannot. *Equal Employment Opportunity Commission v. Arabian American Oil Co.*, 499 U.S. 244, 245 (1991).

WILL PROMOTION OF AN UNLAWFUL ACTIVITY AFTER THE INITIAL PHASE OF "REINVESTMENT" MONEY LAUNDERING OR AN ACT IN FURTHERANCE OF "CONCEALMENT" MONEY LAUNDERING WARRANT THE EXERCISE OF SUBJECT MATTER JURISDICTION UNDER 18 U.S.C. § 1956.

The Fifth Circuit's decision to restrict the analysis of money laundering jurisdiction to the situs of the initial phase of money laundering conflicts with decisions in the Third Circuit (*United States v. Conley*, 37 F.3d 970 (3rd Cir. 1994)); Fourth Circuit (*United States v. Butler*, 211 F.3d 826 (4th 2000); Seventh Circuit (*United States v. Febus*, 218 F.3d 784 (2000)); and Ninth Circuit (*United States v. Sayakhom*, 186 F.3d 928 (9th Cir. 1999), *cert. denied*, 120 S.C. 1216 (2000)).

The conflict among the circuits speaks to both forms of money laundering in issue—"reinvestment" money laundering under 18 U.S.C. §1956(a)(2)(A) and "concealment" money laundering under 28 U.S.C. §1956(a)(2)(B)(i). *See United States v. Hildebrand*, 152 F.3d 756, 762 (8th Cir.), *cert. denied*, 525 U.S. 1033 (1998).

Section 1956 speaks of "reinvestment" money laundering as promoting the carrying on of specified unlawful activity. Namely, using the proceeds of the initial phase of unlawful activity to promote the on-going scheme to defraud. "Concealment" money laundering looks to acts that serve to perpetuate concealment of the initial unlawful activity. *See United States v. Conley*, 37 F.3d 970, 979 (3rd Cir.1994). The Fifth Circuit disregarded the concept of promotion or perpetuation, and limited its analysis to the initial phase—predicate act—of the money laundering. Finding that the predicate act for all five transactions in issue began and ended with an unlawful act in Mexico, i.e., the fraudulent transfer of monies from Aeromexico's Mexican bank to a Mexican exchange house for

conversion from Mexican pesos to United States dollars, the Fifth Circuit stopped its analysis at the Mexican border.

The Fifth Circuit refused to consider the following subsequent acts in promotion and perpetuation of the fraud upon Aeromexico and the foreign banks:

1. The mailing of fraudulent financial statements to the Securities and Exchange Commission to conceal the fraudulent pledging of Aeromexico assets[2];

2. The wire transfer of $5,000,000.00 from Prevoisin's numbered account in New York to an undisclosed account in the Bahamas, where bank secrecy laws apply;

3. The faxing of a statement from Inverworld in San Antonio to Aeromexico to perpetuate the concealment of a sham investment of $37,500,000.00;

4. Prevoisin's formation of a shell Cayman Island entity as the investment vehicle that appears on false monthly account statements transmitted from Inverworld in San Antonio to Aeromexico in perpetuation of a concealed sham investment of $37,500,000.00;

5. The mailing of unauthorized renewal pledge agreements in perpetuation of the Dynaworld and Inverworld fraudulent transactions;

6. The wire transfer of $37,500,000.00 in the Inverworld transaction from Mexico to New York, New York to the Cayman Islands, the Cayman Islands to New York, New York to California, and California to Mexico;

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[2] *See Schmuck v. United States*, 489 U.S. 705, 710-15 (1989) (Mailings further concealment by maintaining a legal facade, even if the mailings do no generate additional monies.)

7. The wire transfer of Aeromexico monies through New York to cover interest payments on the personal loans Prevoisin procured from foreign banks with fraudulent pledges[3]; and

8. The use of the fed wire system to negotiate checks drawn for Prevoisin's personal benefit on a Texas bank account funded with embezzled Aeromexico monies[4].

The Fifth Circuit's analysis also fails to recognize that money laundering can occur in phases, and accordingly, determining jurisdiction does not stop at the first phase but includes analysis of subsequent phases. In *United States v. Morelli*, 169 F.3d 798 (3rd Cir.), *cert. denied*, 120 S.C. 63 (1999), the Third Circuit looked at an embezzlement that involved a series of wire transfers. Morelli and his cohorts took possession of the embezzled monies at the beginning of the scheme; they would then wire transfer the monies up and down a chain of entities, one of which was a shell entity that would take the fall for the failure to pay excise taxes. Morelli argued that the wire transfers could not reflect proceeds, and thus money laundering, until the excises taxes became due from the shell company.

In rejecting Morelli's argument, the Third Circuit wrote,

> [W]e reject this conclusion because we believe that the money became the proceeds of fraud as soon as it entered the hands of members of the scheme. Alternatively, Morelli submits that the money was not the proceeds of wire fraud because the money came into the possession of the scheme as a result of fraud before any of the wirings involving the money occurred. But he ignores the fact that the scheme succeeded as a result of each and every wiring within each and every series of transactions. Accordingly, the money within each series of transactions was the

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[3] *See United States v. Cole*, 988 F.2d 681, 684 (7th Cir.1993) (defendant's payment of interest to defrauded investors promoted the fraudulent investment scheme).

[4] *See United States v. Abuhouran*, 162 F.3d 230 (3rd Cir.1998), cert. Denied, 526 U.S. 1077 (1999).

> proceeds of wire fraud because the fraud from which it resulted was promoted by the wire transfers within the preceding series of transactions.

United States v. Morelli, 169 F.3d at 800.

The Third Circuit's holding should apply to this case. Thus, when determining jurisdiction, the Fifth Circuit should have factored in the series of wire transfers through the United States to promote the Inverworld, Dynaworld, and Citibank transactions. The Fifth Circuit's analysis should not have stopped in Mexico when the proceeds of the fraud "entered the hands of members of the scheme"; and, the Fifth Circuit should not have ignored "the fact that the scheme succeeded as a result of each and every wiring within each and every series of transaction." *Id.*

On "concealment" money laundering, the Fifth Circuit also failed to recognize the concept of separate phases in an offense. For example, in the Citibank transaction, the Fifth Circuit failed to separate the initial eight $1,000,000.00 wire transfers into Prevoisin's numbered account in New York City from the subsequent wire transfer of $5,000,000.00 dollars from Prevoisin's numbered account in New York to a bank account in the Bahamas, where bank secrecy laws apply.

The Fourth Circuit in *Butler* recognized phases in "concealment" money laundering. Butler committed bankruptcy fraud by concealing bankruptcy estate assets. Butler deposited the concealed assets in a friend's bank account. Butler then directed his friend to purchase cashier's checks drawn on the concealed assets for deposit into another account.

Butler contended he could only be charged with bankruptcy fraud and not also with money laundering because the cashier's checks just made up the assets initially concealed from the bankruptcy trustee. In rejecting Butler's argument, the Fourth Circuit noted that the initial deposit into the friend's account was a "completed phase of an ongoing offense," and the cashier's checks constituted money laundering because Butler

was "engag[ing] in a monetary transaction in criminally derived property[5]." *United States v. Butler*, 211 F.3d at 830.

Had the Fifth Circuit recognized the distinction between phases of an ongoing offense, it would have had to find extraterritorial jurisdiction under the money laundering statute. For when Prevoisin, shortly after resigning from Aeromexico and leaving for Europe to establish a new residency, wire transferred $5,000,000.00 from his personal numbered account in New York City to an account in the Bahamas, jurisdiction would have attached for that new phase of concealed money laundering.

The Seventh Circuit's holding in *United States v. Mankarious*, 151 F.3d 694, 706 (7th Cir.), *cert. denied*, 525 U.S. 1056 (1998) also conflicts with the Fifth Circuit's holding that the predicate offense is the sole focus of money laundering object matter jurisdiction.

In *Mankarious*, the Seventh Circuit wrote,

> [B]ecause as we already explained, money laundering does not focus on the specifics of the predicate offense, it does not matter when all the acts constituting the predicate offense take place. It matters only that the predicate offense has produced proceeds in transactions distinct from those transactions allegedly constituting money laundering.

Id., at 706. The same reasoning should have obtained for the Fifth Circuit. It should not matter where the predicate acts take place, it should only matter where the alleged money laundering took place, namely, the wire transfers, mailings, and concealment of assets in the United States.

Had the Fifth Circuit employed the same reasoning as the other four circuits, money laundering jurisdiction would have

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[5] In *United States v. Savage*, 67 F.3d 1435, 1442 (9th Cir.1995), *cert. denied*, 516 U.S. 1136 (1996), the Ninth Circuit concluded that "criminally derived property" under section 1957 of the money laundering statute is equivalent to 'proceeds' under section 1956 of that statute.

attached to this case. Because civil money laundering actions will become more prevalent with a global economy, this Court needs to provide the United States courts of appeals and district courts with clear guidance on how to determine such subject matter jurisdiction.

CONCLUSION

Congress does not want the United States to become a haven for money laundering. Indeed, Congress took the extraordinary step of expressly providing for extraterritorial jurisdiction over money laundering. This step should have cautioned against any United States court from trying to engraft tests or conditions on the money laundering statute's plain language. For as this Court has said, Congress is better equipped to calibrate the law.

Moreover, if this Court allows the money laundering statute to become a hybrid among the circuits, it will invite money laundering by circuit, according to hybrid. Thus, this Court should grant certiorari to remove the graft placed upon the money laundering statute by the Fifth Circuit and foreclose any attempt to engraft other tests and conditions on express extraterritorial jurisdiction.

Respectfully submitted,

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APPENDICES

APPENDIX A

[Filed Jun. 29, 2000]

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41162

AEROVIAS DE MEXICO, S.A. DE C.V., D/B/A, AEROMEXICO,
Plaintiff-Appellant,

v.

GERARDO DE PREVOISIN AND GP INVESTMENT, INC.,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(4:95-CV-48)

Before GARWOOD, DeMOSS and PARKER, Circuit Judges. PER CURIAM:*

Plaintiff-Appellant, Aerovias de Mexico, S.A. de C.V. ("Aerovias"), appeals the district court's dismissal of its suit for lack of subject matter jurisdiction. We agree with the district court's analysis and affirm its decision.

Discussion

Aerovias brought suit against Gerardo de Prevoisin "Prevoisin") and GP Investment, Inc. ("GP"), claiming that Prevoisin committed a series of wrongful acts while

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Chairman of the Board of Aerovias. Aerovias claimed that, through a series of transactions, Prevoisin and GP committed fraud, converted and wasted Aerovias's corporate assets, breached fiduciary duties and violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"). See 18 U.S.C. §§ 1951-68 (1994)., After successful removal by the defendants and a series of procedural rulings, the district court concluded that it did not have subject matter jurisdiction and dismissed the case.

We agree with the district court that because all predicate acts for the transactions that form the basis of Aerovias's money laundering claim occurred outside of the United States, it lacked subject matter jurisdiction under RICO. *See* 18 U.S.C. §1956(c)(7)(B) (West Supp. 2000) (listing specified unlawful activities necessary to establish subject matter jurisdiction under the money laundering statute).

In addition, we agree with the district court that it also lacked subject matter jurisdiction based on the conduct or effects test. While some of the proceeds of the alleged fraudulent activity may have been used to procure property in the United States, the conduct itself occurred in Mexico. "Mere preparatory activities, and conduct far removed from the consummation of the fraud, will not suffice to establish jurisdiction." *North South Fin. Corp. v. Al-Turki,* 100 F.3d 1046, 1051 (2d Cir. 1996) (quoting *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1017 (2d Cir. 1975)). We have adopted the Second Circuit's articulation of the conduct test. *See Robinson v. TCI/US West Communications, Inc.*, 117 F.3d 900, 906 (5th Cir. 1997)

Conclusion

Because we agree with the district court's analysis, we affirm its dismissal of Aerovias's suit based on lack of subject matter jurisdiction.

AFFIRM

APPENDIX B

[Filed Aug. 10, 1999]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

4:95cv48

AEROVIAS DE MEXICO, S.A., DE C.V.
d/b/a AEROMEXICO
Plaintiff,

v.

GERARDO DE PREVOISIN & GP INVESTMENT, INC.,
Defendant.

MEMORANDUM OPINION and ORDER

On this day came on for consideration Defendant Gerardo De Prevoisin's Second Motion to Dismiss and after considering the motion, the response, and the reply, the Court is of the opinion that the Motion to Dismiss should be granted.

Introduction

Aerovias de Mexico, S.A. de C.V. ("Aerovias") brings suit against Gerardo De Prevoisin ("Prevoisin") and G.P. Investment, Inc. ("GP") claiming that Prevoisin committed a series of wrongful acts while acting as Chairman of the Board for Aerovias. As claimed by Aerovias, the allegedly wrongful acts relate to the following five main transactions: (1) The pledge of Aerovias's $15,250,000 in certificates of deposit from Dynaworld Bank and Trust for a personal loan (the "Dynaworld transaction"); (2) The conversion of Aerovias's $37,500,000 investment'in Inveworld, Inc. and Inverworld Securities (the "Inverworld transaction"); (3) The payment of

Aerovias's funds to Am-Mex Services Corporation ("Am-Mex") and ABC Services, Inc. ("ABC"), two companies controlled by Prevoisin; (4) Aerovias's $8,000,000 payment, at Prevoisin's direction, to Prevoisin's personal account at Citibank in New York City (the "Citibank transaction"); and (5) Prevoisin's payment of $11,000,000 from Aerovias's funds for interest payments associated with the Dynaworld and Inverworld transactions. These transactions form the basis for Aerovias's claims that Prevoisin and GP committed fraud, converted and wasted Aerovias's corporate assets, breached fiduciary duties, and violated the Racketeer Influenced and Corrupt Organizations Act ("RICO").[1] In its RICO claim, Aerovias contends Prevoisin and GP violated RICO by engaging in a pattern of wire and mail fraud, by fraudulently dealing in the purchase and sale of Aeromexico securities within the meaning of 15 U.S.C. § 77q, and by engaging in money laundering. *Pls.' First Am. Compl.* at 24.

Aerovias originally filed its action in state court, and Prevoisin and GP filed their notice of removal on diversity of citizenship and federal question grounds. Prevoisin filed a motion to dismiss and claimed that the Court lacked personal jurisdiction. By Memorandum Opinion and Order dated March 24, 1997, the Court determined it lacked subject matter jurisdiction over the action; therefore, the Court dismissed the case as to both Prevoisin and GP.[2]

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[1] In its First Amended Complaint, Aerovias asserted the following eight state law causes of action (the "state law claims") against Prevoisin: (1) Money had and received; (2) Fraud; (3) Conversion; (4) Breach of fiduciary duty; (5) Waste of corporate assets; (6) Constructive trust; (7) Injunction and receiver appointment; and (8) Blue Sky laws. The RICO violation is the only federal claim asserted by Aerovias.

[2] At the time the Court entered the March 24, 1997 Memorandum Opinion and Order, Aerovias's RICO claim did not include allegations that Prevoisin engaged in money laundering. See *Pls.' First Am. Orig. Pet.* at 12. On Novemnber, 14, 1997, Aerovias amended its complaint to include such allegations.

Additionally, the Court found that it did not have personal jurisdiction over Prevoisin based on a determination that the conduct at issue occurred solely in Mexico. Thereafter, Aerovias filed a motion for reconsideration, which the Court granted in order to allow the parties to conduct further discovery on subject matter and personal jurisdiction. After additional discovery, Prevoisin filed his Motion to Reinstate the Court's Order dated March 24, 1997, which the Court denied by Order dated March 31, 1999. Because Aerovias alleged a RICO claim predicated in part on racketeering activity of money laundering, the Court determined it had subject matter jurisdiction due to the grant of extraterritorial jurisdiction in the money laundering statute. Additionally, the Court concluded it had personal jurisdiction over Prevoisin because the Amended Complaint alleged contacts in Texas.

Thereafter, Prevoisin filed his Second Motion to Dismiss and requested that the Court clarify its findings of specific personal jurisdiction and subject matter jurisdiction. Specifically, Prevoisin would like the Court to determine that it does not have personal jurisdiction over Prevoisin for claims relating to the Inverworld or Dynaworid transactions. Additionally, Prevoisin requests that the Court specify what claims are within the Court's subject matter jurisdiction.

Subject Matter Jurisdiction

A party seeking to invoke the jurisdiction of a federal court must demonstrate that the case rests within the court's jurisdiction. *Marathon Oil Co. v. Ruhrgas*, 145 F.3d 211, 216 (5th Cir. 1998) , *rev'd on other grounds*, 119 S. Ct. 1563 (1999). "A court may base its disposition of a motion to dismiss for lack of subject matter jurisdiction on (1) the complaint alone: (2) the complaint supplemented by undisputed facts; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Robinson v. TCI/US West Communications Inc.*, 117 F.3d

900, 904 (5th Cir. 1997). "When a defendant makes a 'factual attack' on the court's jurisdiction, the plaintiff must 'prove the existence of subject-matter jurisdiction by a preponderance of the evidence.' An attack is 'factual' rather than 'facial' if the defendant 'submits affidavits, testimony, or other evidentiary materials.'" *Irwin v. Veterans Admin.*, 874 F.2d 1092, 1096 (5th Cir. 1989) (citations omitted)

Discussion

Because the Court concludes that it lacks subject matter jurisdiction, the Court need not address the issue of personal jurisdiction.

I. Subject Matter Jurisdiction

Since Aerovias asserts a RICO claim and the state law claims, the Court will address subject matter jurisdiction as it relates to each group of claims.

A. RICO Claim

1. Plaintiff's Allegations in the Amended Complaint

In its RICO claim, Aerovias alleges that "Latin Credit Corporation, Am-Mex, ABC, and I.G. Services, Ltd. are enterprises within the meaning of 18 U.S.C. § 1961(4) . . . ."[3] *Pl.'s First Am. Compl.* At ¶ 78. Additionally, Aerovias claims, "The fraudulent misrepresentations and procurement of money by such false pretenses, representations, or promises by Prevoisin and GP described represented a scheme and artifice to defraud [Aerovias] . . . . "Id. at ¶ 79. Further, Aerovias contends the scheme was facilitated by the

[3] While Prevoisin has not claimed that Aerovias's RICO claim should be dismissed for failure to state a claim and the Court has made no determinations of such, the Court does note that a plaintiff asserting a RICO claim "must plead specific facts, not mere conclusory allegations, which establish the enterprise." *Montesano v. Seafirst Commercial Corp.*, 818 F.2d 423, 427 (5th Cir. 1987). Aerovias's First Amended Complaint .appears to be lacking in this respect.

use of the United States mail and wire systems and constituted mail and wire fraud. Finally, Aerovias alleges that Prevoisin and GP engaged in securities fraud and money laundering to further the RICO violation.

2. Defendant's Motion

Prevoisin argues that Aerovias's RICO claim must be dismissed because the Court lacks subject matter jurisdiction. He begins by, pointing out that the Court's determination that it had subject matter jurisdiction over the RICO claim in its March 31, 1999 Memorandum Opinion and Order was based on the grant of extraterritorial jurisdiction in the money laundering statute. Prevoisin's arguments stem from the following provision of the money laundering statute:

> [W]ith respect to a financial transaction occurring in whole or in part in the United States, [the specified unlawful activity which creates dirty money that is later laundered is defined as] an offense against a foreign nation involving—(i) the manufacture, importation, sale, or distribution of a controlled substance . . . ; (ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire; (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank . . .

18 U.S.C. § 1956(c) (7) (B). From this statute, Prevoisin argues that the Court only has jurisdiction if the underlying specified unlawful activity ("SUA") that created the dirty money resulted from crimes involving drug trafficking or other violent offenses. Since the SUA in this case is based on embezzlement, Prevoisin argues that the money laundering statute is not triggered and, therefore, jurisdiction is lacking. In the alternative, Prevoisin asserts that the Court's jurisdiction is limited to Aerovias's RICO claim based on payments to Am-Mex and the Citibank transaction.

3. Plaintiff's Response

Aerovias responds by claiming that the underlying SUA's of which it complains do come within the express language of "fraud, or any scheme or attempt to defraud, by or against a foreign bank" provided in Title 18, United States Code Section 1956(c) (7) (B). Aerovias claims Prevoisin made false statements to external auditors who prepared financial statements for Aerovias, which were then supplied to Aerovias's banks in Mexico. Aerovias states that Prevoisin's misrepresentations influenced the banks' decisions not to take steps to prevent Prevoisin from continuing in his position of control at Aerovias. Additionally, Aerovias claims that the acts of mail and wire fraud alleged in its Amended Complaint constitute the SUA's, as defined in Section 1956(c) (7) (A), underlying its money laundering claim.

4. Court's Analysis

a. Jurisdiction Based on Money Laundering

In this case, the parties concede that the alleged money laundering occurred in part in the United States.[4] This being the case, according to the statute, the Court has subject matter jurisdiction if the underlying SUA was a drug related offense, murder, kidnapping, robbery, extortion, destruction of property by fire, or fraud against a foreign bank. *See* 18 U.S.C. §1956(c) (7) (B). Contrary to Aerovias's assertion that mail and wire fraud can form the STJA's in this case, the Court concludes that since the financial transaction occurred in part in the United States, the SUA is limited to those offenses listed in Section 1956(c) (7) (B).

The Court finds that the extraterritorial jurisdiction provision of the money laundering statute fails to provide the Court with subject matter jurisdiction over Aerovias's RICO

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[4] *Pl.'s Resp. To Def.'s Mot. to Reinstate Order and* J. at 4.

claim.[5] After reviewing Aerovias's Amended Complaint, the Court is of the opinion that the acts of malfeasance for all five transactions alleged by Aerovias occurred in Mexico. While Aerovias has alleged wire transfers in the United States for purchases in the United States, this does not avoid the statutory requirement that the SUA must be an offense listed in Section 1956(c) (7) (B). Aerovias's allegations of fraud, conversion, mail fraud, and wire fraud do not fall within any of the listed offenses of Section 1956(c) (7) (B). Since Aerovias is unable to point to a SUA on which to base its money laundering claim, the extraterritorial jurisdiction of the money laundering statute provides no jurisdictional basis for the Court.[6] While Aerovias attempts to bring itself within Section 1956(c) (7) (B) by claiming that the acts constitute fraud against a foreign bank, the Court finds no merit to such contention. Up to this point, Aerovias has claimed Prevoisin's conduct caused injury to Aerovias. Although Aerovias alleged that funds were negotiated through or transferred to

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[5]Although the Court determined that it did have subject matter jurisdiction in its Memorandum Opinion and Order dated March 31, 1999, the Court came to such determination without the benefit of Prevoisin's current argument that the underlying SUA must fall within one of the listed offenses in Section 1956 (c) (7) (B). In its prior Order, the Court was not limiting the SUA to the offenses listed in that section, therefore, the Court is of the view that its earlier determination was incorrect.

[6] In his Second Motion to Dismiss, Prevoisin claims that Aerovias has admitted that the funds transferred to Am-Mex, ABC, and the Citibank account were not embezzled but were mere advances which Prevoisin was contractually bound to repay. *Def.'s Second Mot. to Dismiss* at 1. Assuming as to these three transactions that the parties had not consented that the financial transactions occurred in part in the United States and that these funds were advances, the Court finds that Aerovias would still be unable to satisfy the elements for a money laundering claim. This results because Aerovias would have to argue that a wire transfer from one of these accounts to purchase property is both the SUA and the money laundering. This violates the nature of a money laundering claim, which follows in time the underlying claim that creates the dirty money.

banks, there have been no allegations of any knowing execution or attempt to execute a scheme or artifice to defraud a financial institution.[7] *See Pl.'s First Am. Compl.*

b. Jurisdiction based on Conduct or Effects Tests

Since the Court has concluded that it does not have jurisdiction based on the money laundering statute, the only RICO act alleged by Aerovias that expressly provides for extraterritorial jurisdiction, the Court is again faced with the task of considering the limits of RICO's extraterritorial jurisdiction based on the "conduct" test and the "effects" test.[8] Under either test, the "critical consideration" is whether the plaintiff, defendant, and the transaction are foreign or domestic. *Fidenas AG v. Compagnie Internationale,* 606 F.2d 5, 8 (2d Cir. 1979).

i. The Conduct Test

(A) Legal Standard

The conduct test has been succinctly described by the Second Circuit[9]:

> [W]e entertain suits by aliens only where conduct material to the completion of the fraud occurred in the United States. Mere preparatory activities, and conduct far removed from the consummation of the fraud, will not suffice to establish jurisdiction. Only where conduct "within the United States directly caused" the loss will a district court have jurisdiction over suits by foreigners

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[7] Even if Aerovias could assert such a claim, which the Court does not believe Aerovias would have standing to do, the Court will not permit Aerovias to expand its claims at this late date.

[8] The Court first undertook this task in its Memorandum Opinion and Order dated March 24, 1997.

[9] The Fifth Circuit adopted the Second Circuit's evaluation of the conduct test in *Robinson v. TCI/US West Communications, Inc.*, 117 F.3d 900, 906 (5th Cir. 1997).

> who have lost money through sales abroad. *Psimenos v. E.F. Hutton & Co., Inc.*, 722 F.2d 1041, 1046 (2d Cir. 1983) (quoting *Bersch*, 519 F.2d at 993) . This test focuses on how the conduct within the United States relates to the alleged fraudulent scheme, "on the theory that Congress did not want 'to allow the United States to be used as a base for manufacturing fraudulent security devices for export, even when these are peddled only to foreigners.'" *Id.* at 1045 (quoting *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1017 (2d Cir. 1975)).

North South Fin. Corp. v. Al-Turki, 100 F.3d 1046, 1051 (2d Cir. 1996); *General Motors Corp. v. de Arriortua.*, 948 F. Supp. 670, 681 (E.D. Mich. 1996). Courts recognize that "conduct that is 'merely preparatory' to a fraud is not a basis for jurisdiction of the fraud to be vested in a court of the United States.' *Butte Mining PLC v. Smith*, 76 F.3d 287, 291 (9th Cir. 1996). In fact, courts have refused:

> to extend the jurisdictional scope of RICO to make criminal the use of the mail and wire in the United States as part of an alleged fraud outside the United States. We do not suppose that Congress in enacting RICO had the purpose of punishing frauds by aliens abroad even if peripheral preparations were undertaken by them here.

Butte Mining, 76 F.3d at 291; *North South Fin. Corp.*, 100 F.3d at 1053 (quoting *Butte Mining* language with approval).

(B) Court's Analysis

The Court concludes that Prevoisin's conduct occurred almost entirely in Mexico. Distilled to their essence, Aerovias's complaints against Prevoisin are complaints of various acts of malfeasance and fraud by Prevoisin acting in his capacity as CEO of Aerovias. Specifically, Prevoisin is accused of abusing his position to secure personal loans with corporate assets and concealing this fraud by making fraudulent entries on the books of Aerovias. Prevoisin is also

accused of having checks drawn on Aerovias in favor of brokerage houses in Mexico City and Am-Mex and ABC, entities directly controlled by Prevoisin. *See Pl's. First Am. Compl.* at 4. The proceeds of this money were then used to procure property in Colorado and Texas and to make interest payments on Prevoisin's personal loans relating to the Dynaworld and Inverworld transactions. *Id.* at 4-5. Additionally, Aerovias alleges that the funds involved in the Inverworid transaction, "in part, flowed through [the] fed wire system." *Id.* at 3.

Accordingly, the wrongful conduct in this case occurred almost entirely in Mexico. While property may have been bought in the United States with the proceeds of the fraud, the fraudulent conduct itself occurred in Mexico at the time Prevoisin allegedly directed the payment of Aerovias's funds for his benefit. At this point, the fraudulent conduct and the injury to Aerovias was complete. The post-embezzlement conduct of Prevoisin in the United States was not material to the completion of the fraud and thus cannot serve as a basis for subject matter jurisdiction.[10] Thus, the RICO statute is not applicable to this case pursuant to the "conduct" test.

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[10] Additionally, as to the Inverworld transaction, the bulk of Aerovias's claims relate to conduct by third parties. Specifically, Aerovias alleges that "Inverworld, 151, and Zollino made all investment decisions for [the Inverworld transaction]." *Id.* at 6. Further, Aerovias claims that "Inverworld, ISI, and Zollino sustained the sham purchase and defalcation of funds by sending monthly statements of account from San Antonio, Texas" and that Aerovias "continued to rely upon the statements and the representations of 151, Inverworid, Zollino, and Enrique Narciso regarding their investment of $37.5 million on behalf of [Aerovias]." *Id.* at 7-8.

ii. The "Efects" Test

(A) Legal Standard

The "effects" test is designed to:

> implement [] the intent of Congress that the securities laws be given extraterritorial application "in order to protect domestic investors who have purchased foreign securities on American exchanges and to protect the domestic securities market from the effects of improper foreign transactions in American securities." *Schoenbaum v. Firstbrook*, 405 F.2d 200, 206 (2d Cir. 1968) (Lumbard, C. J.), *reh'g on other grounds*, 405 F.2d 215 (in banc), *cert. denied*, 395 U.S. 906, 89 S.Ct. 1747, 23 L.Ed.2d .219 (1969). In this way, the United States' prohibition of securities fraud "may be given extra-territorial reach whenever a predominantly foreign transaction has substantial[11] effects within the United States." *Consolidated Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261-62 (2d Cir. 1989). Transactions with only remote and indirect effects in the United States do not qualify as substantial. *Id.* at 262.

North South Fin. Corp. v. Al-Turki, 100 F.3d 1046, 1051 (2d Cir. 1996); *United States v. ALCOA*, 148 F.2d 416, 443 (2d Cir. 1945) ("[I]t is settled law . . . that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its

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[11] The Fifth Circuit has expressed reservations about requiring "substantial" effect instead of requiring only "some" effect. *American Rice, Inc. v. Arkansas Rice Growers*, 701 F.2d 408, 414 n.8 (5th Cir. 1983) . Instead, the Court should apply multiple factors in determining whether extraterritorial jurisdiction is proper. *Id.* at 414 n.9. However, included within the factors is a determination of "the relative significance of the effects on the United States . . . ." *Id.* The Second Circuit has expressly rejected the Fifth Circuit's view. *Totalplan Corp. of Am. v. Colborne*, 14 F.3d 824, 830 (2d Cir. 1994). This Court is bound to follow Fiftb Circuit authority on this point.

borders which the state reprehends . . . ."); *Les Ballets Trockadero De Monte Carlo, Inc. v. Trevino*, 945 F. Supp. 563, 566-67 (S.D.N.Y. 1996)

(B) Court's Analysis

The Court concludes that the RICO statute is not applicable to this case pursuant to the effects test. There are minimal, if any, effects of Prevoisin's alleged fraud which are felt in the United States. The sellers of the properties in Colorado and Texas as well as the banks in the United States have suffered no damages as a result of Prevoisin's alleged fraud. The damages fall entirely upon Aerovias, a Mexican citizen.

In summary, the Court concludes that neither the money laundering statute, the only statute alleged that expressly provides for extraterritorial jurisdiction, nor the conducts or effects tests support subject matter jurisdiction over Aerovias's RICO claim. Without such jurisdiction, the Court does not possess the Constitutional authority to entertain this controversy; therefore, Prevoisin's Second Motion to Dismiss for lack of jurisdiction should be granted as to Aerovias's RICO claim.

B. State Law Claims

1. Defendant's Motion

Prevoisin urges the distinction between a money laundering offense and the underlying crime that produces proceeds which are later laundered. Prevoisin argues that this distinction is critical because the money laundering statute is aimed at the laundering of dirty money and does not penalize the underlying unlawful activity that causes the money to be dirty in the first place. In this case, Prevoisin contends that the extraterritorial jurisdiction of the money laundering statute does not extend to the state law claims, which are the underlying activities that created the dirty money that was later laundered.

2. Court's Analysis

The Court begins by noting that Aerovias fails to respond to Prevoisin's arguments regarding the state law claims. Since the Court has concluded that it lacks subject matter jurisdiction over Aerovias's federal claim, the Court must now determine whether it should maintain supplemental jurisdiction over Aerovias's state law claims. When determining whether a court should exercise jurisdiction over pendent state law claims, "a federal court should consider and weigh in each case . . . the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims." *Carnegie-Mellon University v. Cohill,* 108 S.Ct. 614 (1988). Additionally, the general rule provides that when the federal claims are dismissed before trial; the pendent state claims should be dismissed without prejudice. *Wong v. Stripling, Etc.,* 881 F.2d 200, 204 (5th Cir. 1989). Here, the factors of judicial economy, convenience, fairness, and comity suggest that this Court should decline jurisdiction over the remaining state law claims; therefore, these claims should be dismissed without prejudice.

Conclusion

Defendant Prevoisin's Second Motion to Dismiss should be granted since the Court lacks subject matter jurisdiction over Aerovias's federal claim. Therefore, this case should also be dismissed as to GP Investments, Inc. However, since Aerovias has filed a Motion for Sanctions against Prevoisin, the Court shall retain jurisdiction over this action and will hold a hearing to determine whether any sanctions should be imposed.

IT IT SO ORDERED.

Signed this 17 day of August, 1999.

/s/ Paul Brown
UNITED STATES DISTRICT COURT

APPENDIX C

[Filed Aug. 9, 2000]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41162

AEROVIAS DE MEXICO, SA DE CV,
doing business as Aeromexico
Plaintiff - Appellant

v.

GERARDO DE PREVIOSIN; GP INVESTMENT INC.,
Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas, Sherman

ON PETITION FOR REHEARING

Before GARWOOD, DeMOSS and PARKER, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT:

/s/ [Illegible]
United States Circuit Judge

APPENDIX D

STATUTES

§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986 or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the, proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes

of this paragraph and paragraph (2), the term "represented" means any representation made by a law, enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(l) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) $10,000.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding; or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire;

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978 [2];

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 5 13 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by ban officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793,

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[2] So in original. Closing parenthesis was struck out.

794, or 798 (relating to espionage), section 83 1 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copy-night infringement), section 2320 (relating to trafficking in counterfeit goods and services),[3] section 2332

[3] So in original.

(relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,[3] a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act; or

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(F) Any act or activity constituting an offense involving a Federal health care offense.

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[3] So in original.

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) **Notice of conviction of financial institutions.**—If any financial institution or any officer, director, or employee

of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any[4] person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

§ 1957. Engaging in monetary transactions property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(i) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable Under paragraph (1) of not more than twice the amount of the Criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

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[4] So in original. Probably should not be capitalized.

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by The sixth amendment to the Constitution;

(2) the term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term "specified unlawful activity" has the meaning given that term in section 1956 of this title.

§ 1961. Definitions

Assused in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating. to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement) section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating

to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 23 12 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property); section 2318 (relating to trafficking in courterfeit labels for phonorecords computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any

act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the controlled Substances Act), punishable under any law of the united States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the united States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which

occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States a State or political subdivision thereof or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means. any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the

powers conferred on the Attorney General by this chapter. Any department or agency so designated may Use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.